

REMARKS

Applicants have considered the outstanding official action. It is respectfully submitted that the claims are directed to patentable subject matter as set forth below.

Claims 13 and 14 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite on the basis that "the greatest depth" lacks antecedence and the "depth" referred to thereafter has double antecedence.

It is initially noted that the phrase of claims 13 and 14 read "the depth greatest" and not "the greatest depth". Applicants submit that antecedent basis is present with regard to "the depth" of "the first outward projecting portion". However, in order to clarify the language, applicants have amended claims 13 and 14 to refer to "a greatest depth in the first outward projecting portion" with the subsequent occurrence thereafter being amended to read "the greatest depth". Further, the term "said depth" which first follows "a greatest depth" is "said depth of said at least one additional outward projecting portion" (emphasis added) and, thus, has proper antecedent basis. Thus, applicants submit that proper antecedent basis is present in claims 13 and 14 with respect to the noted phrases.

Withdrawal of the rejection under 35 U.S.C. §112, second paragraph, is requested.

Claims 13 and 14 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,781,289 (Perkins).

Claims 13 and 14 provide for a portion of the at least one additional outward portion to have a portion projecting equal in depth to a greatest depth of the first outward projecting portion, and a portion of the additional outward portion which is of a lesser depth than the greatest depth of the first outward projecting portion. Perkins does not teach this claimed feature. To further distinguish this feature from the teachings of Perkins, claims 13 and 14 have been amended to clarify the claimed matter. Claims 13 and 14 further provide that the portion of the at least one additional outward projecting portion equal in depth to a greatest depth of the first outward projecting portion is at a position in said package (claim 13) or blister pack (claim 14) to render the package/package self-indexing when the package/package is aligned with one or more packages/packs having a structure of the package/package. Perkins does not provide any teaching of providing different depths to render the package self-indexing. Perkins provides no recognition of the problem being addressed by applicants' claimed invention and does not describe structure as claimed by

applicants to solve the problem. Accordingly, applicants submit that Perkins does not teach each and every element claimed and, thus, does not anticipate claims 13 and 14 within the meaning of 35 U.S.C. §102. Withdrawal of the §102 rejection is respectfully requested.

Claims 1-12 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. D447,408 (Humphrey).

In the description of Humphrey as to independent claims 1 and 2 at page 3 of the outstanding official action, it is respectfully noted that the Examiner does not address the claim limitation that the package (claim 1) or blister pack (claim 2) has portions of relative depth to render the package/package self-indexing. Thus, Humphrey does not teach each and every element as claimed. Humphrey does not provide any disclosure regarding the package illustrated being self-indexing and in view of the base of the disclosed package being the sole outermost projection (as shown in the figure illustration at page 4 of the outstanding official action), such package would have the same problems as set forth in the "Background of the Invention" of the captioned application as to conventional packages and blister packs, i.e., toppling forward or being crushed resulting in a messy display and/or requiring time-consuming maintenance by personnel. Accordingly, Humphrey does not anticipate claims 1-12 within the meaning of 35 U.S.C. §102 since each and

every element is not taught thereby. Applicants respectfully request withdrawal of the §102 rejection based on Humphrey.

Claims 1-4, 7-12, 15 and 16 are rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. D467,494 (Udwin).

In the description of Udwin as to independent claims 1 and 2 at page 6 of the outstanding official action, it is respectfully noted that the Examiner does not address the claim limitation that the package (claim 1) or blister pack (claim 2) has portions of relative depth to render the package/pack self-indexing. Thus, Udwin does not teach each and every element as claimed. Udwin shows an ornamental design for a T-ball kit including multiple article-containing compartments with a common bottom portion as best shown in Figures 1 and 4-5. As clear from Figures 4 and 5, the bottom portion has an outward projection with a depth greater than a depth of any other outward portion of the pack. Thus, Udwin has the same shortcomings as Humphrey with respect to the claimed invention. Udwin does not teach a package or blister pack structured to be self-indexing as claimed. Udwin provides no recognition of the problem being addressed by applicants and does not describe structure as claimed by applicants to solve the problem. Accordingly, applicants submit that Udwin does not teach each and every

element as claimed within the meaning of 35 U.S.C. §102. Withdrawal of the §102 rejection based on Udwin is therefore respectfully requested.

Claims 1-10 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent Application Publication No. 2001/0007308 (Glassman).

In the description of Glassman as to independent claims 1 and 2 at page 8 of the outstanding official action, it is respectfully noted that the Examiner does not address the claim limitation that the package (claim 1) or blister pack (claim 2) has portions of relative depth to render the package/package self-indexing. Glassman discloses a clamshell package having the same shortcomings as Humphrey and Udwin with respect to the claimed invention. Glassman does not teach a package or blister pack structured to be self-indexing as claimed. Glassman describes a package (best shown in Figures 1 and 4 with clamshell halves 12 and 14 wherein half 12 has shaped pocket areas 12a. The bottommost portion of area 12a has feet 38 and 40 to allow the package to freely stand upright for displaying a product. Half 14 has pocket areas 14a but such do not extend to a bottom area of the package or allow the package to stand upright. Thus, Glassman does not teach each and every element of claims 1 and 2. Withdrawal of the rejection under 35 U.S.C. §102 based on Glassman is accordingly requested.

Claims 13 and 14 are rejected under 35 U.S.C. §103(a) as unpatentable over Humphrey, Udwin and Glassman as applied above and further in view of Perkins.

As set forth above, none of Humphrey, Udwin, Glassman or Perkins teach a package or blister back which is structured as claimed and is self-indexing with respect to packages or packs of the same structure. None of these applied references recognize the problem being solved and do not teach or suggest a solution to the problem. In finding obviousness of the claimed invention over a combination of references, or over a single reference, a reason must appear in the prior art for making the combination or for selecting the different features of a single reference. The court in In re Newell, 13 USPQ2d 1248 (Fed. Cir. 1989), at page 1250, stated -

"It is well established that in deciding that a novel combination would have been obvious, there must be supporting teaching in the prior art. 'That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.' In re Spormann, 363 F.2d 444, 448, 150 USPQ 449, 452 (CCPA 1966)."

Moreover, for a proper rejection the claimed invention must be determined to be obvious from a fair reading of the prior art as a whole and requires a comparison of the subject matter claimed with the prior art as a whole. In re Gordon, 221 USPQ 1125, at 1127; In re Rothermel and Waddell, 125 USPQ 328, at 331-332; and In re Aufhauser, 158 USPQ 351, at

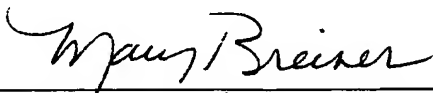
353. In the case at hand, there is nothing in the individual references which suggests the specific combination of the claims. None of the references applied under 35 U.S.C. §103 teach or suggest portions of a package or blister pack having relative depth as to each other to render the package or pack self-indexing. The packages of the applied art would topple forward or be crushed resulting in a messy display and/or require maintenance by personnel.

Accordingly, neither Humphrey, Udwin, Glassman nor Perkins, alone or in combination, teach or suggest each element of the claimed invention and, thus, do not render the claimed invention obvious within the meaning of 35 U.S.C. §103. Withdrawal of the §103 rejections therefore is respectfully requested.

Reconsideration and allowance of the claims is respectfully requested.

Respectfully submitted,

ANTHONY J. CAFFERATA ET AL

By 

Mary J. Breiner, Attorney
Registration No. 33,161
S. C. JOHNSON & SON, INC.
1525 Howe Street
Racine, Wisconsin 53403-2236

Telephone: (703) 684-6885